

CALIFORNIA HORSE RACING BOARD

Submitted by California Thoroughbred Trainers

| California Horse Racing Board | | | | |
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| From | Current Rule Number and Text | Proposed Modifications Received | Comments received | Staff Recommendation |
| California Thoroughbred Trainers | <p><u>2086. Definitions.</u></p> <p>... (p) <u>“Matched wager” means the wager that is formed when two or more persons are confirmed by the exchange provider as having placed identically opposing wagers in a given market on the exchange.</u></p> | <p>Modify 2086(p):</p> <p>...2086(p) “Matched wager” means the wager that is formed when two or more persons, <u>none of whom may be an exchange provider or its agents</u>, are confirmed by the exchange provider as having placed identically opposing wagers in a given market on the exchange.</p> | <p>This latest version of 2086 no longer includes the definition “Corrective Wager” which was included in the prior two versions. “Corrective wager” is a device allowing the exchange provider to make bets in order to balance unmatched bets. Although the definition of “Corrective Wager” is no longer included in the proposed regulations, there is nothing in the latest regulations which purports to define or explain the extent of the exchange provider’s financial interaction with the betting system. The implication is that the exchange provider will not be a market maker. But that is not set forth in the regulations despite the removal of the “Corrective Wagers” definition. In response thereto, CTT proposes a change to the language of the definition of “Matched Wagers” found in 2086(p).</p> | |
| California Thoroughbred Trainers | <p><u>2086.1(b). Authorization for Exchange Wagering.</u></p> <p><u>(a) Exchange Wagering may be conducted upon the approval of the Board as provided for in this article and under the provisions of Business and Professions Code sections 19604.5(b)(2) to (7), inclusive.</u></p> | <p>Mirror the language of 19604.5(b).</p> <p><u>“...(b) Notwithstanding any other law, rule, or regulation, exchange wagering by residents of California</u></p> | <p>2086.1(b) makes reference to the licensee not offering out-of-state exchange wagering to California residents. It appears to be in conflict with <u>Business and Professions Code</u> section 19604.5(b) which does allow,</p> | |

| California Horse Racing Board | | | | |
|----------------------------------|--|---|--|----------------------|
| From | Current Rule Number and Text | Proposed Modifications Received | Comments Received | Staff Recommendation |
| | <p>(b) Despite subsection (a) of this regulation, a licensee may conduct exchange wagering on any horse race conducted outside of California where the licensee does not offer exchange wagering to residents of California on that race.</p> | <p><u>and residents of jurisdictions outside of California on the results of horse races conducted in California, and by residents of California on the results of horse races conducted outside of California, shall be lawful provided that all of the following apply...</u>"</p> | <p>under certain terms and conditions, for betting on out-of-state races by California account holders. Subsection (b) of the proposed regulation, on the other hand, seems to prohibit wagering on out-of-state races by California residents. Consistency is required.</p> | |
| California Thoroughbred Trainers | <p><u>2086.6(i). Operating Plan Required.</u></p> <p><u>As part of the exchange wagering license application, and any renewal application, the applicant shall submit a detailed operating plan in a format and containing such information as required by the Board. At a minimum, the operating plan shall address the following:</u></p> <p><u>(a) A detailed report of the daily operation of the exchange.</u></p> <p><u>(b) Management of customer accounts including deposits, withdrawals, debits and credits. This shall include:</u></p> <p><u>(1) A policy to prevent commingling of funds; and</u></p> <p><u>(2) Evidence of an established account with a Federal Deposit Insurance Corporation (FDIC) insured bank in which all funds of the account holders will be deposited. This shall include evidence that account holder's funds are segregated and held in a separate FDIC insured bank account of the exchange provider, and that the funds shall not be used for any purpose other than those required</u></p> | <p>Strike 2086.6(i).</p> <p>"(i) The operating plan submitted pursuant to this regulation, and any subsequent updates or changes to such operating plan, shall be exempt from disclosure pursuant to Government Code section 6254(k) and non-disclosable to the public."</p> | <p>Subsection 2086.6(i) attempts to make the operating plan non-disclosable pursuant to <u>Government Code</u> section 6254.¹ It is not clear how the exemption in Section 6254 applies to these records. No privilege is stated. The only privilege which seems remotely applicable is the "Trade Secrets" privilege and if so, the trade secrets would only apply to a small portion of the operating plan. Trade secrets should remain confidential. As for the remainder of the operating plan, there is no exemption from disclosure set forth in the Exchange Wagering Law. It is not clear how subsection (i) is consistent with the Exchange Wagering Law. The trade secrets can be protected while making the remainder of the operating plan, including the critical budgetary estimates and wagering information, disclosable. CTT</p> | |

¹ Government Code Section 6254(k) lists the following exemption to disclosure under the Public Records Act: "Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege."

| California Horse Racing Board | | | | |
|-------------------------------|--|---------------------------------|--|----------------------|
| From | Current Rule Number and Text | Proposed Modifications Received | Comments Received | Staff Recommendation |
| | <p><u>by the account holder's exchange wagering transactions.</u></p> <p><u>(c) Technology and hardware and software systems information, which shall include a data security policy, as well as a policy for the notification of the Board and account holders of any unauthorized access that may compromise account holders' personal information.</u></p> <p><u>(d) Financial information that demonstrates the financial resources to operate an exchange and a detailed budget that shows anticipated revenue, expenditures and cash flows by month projected for the term of the license.</u></p> <p><u>(e) Document retention policies including those related to account holder personal information and wagering information.</u></p> <p><u>(f) A customer complaint and conflict resolution process.</u></p> <p><u>(g) Programs for responsible wagering.</u></p> <p><u>(h) The requirements for exchange wagering accounts established and operated for persons whose principal residence is outside of the state, which accounts may be utilized for wagers on California races only, and cannot be utilized to wager on non-California races.</u></p> <p><u>(i) The operating plan submitted pursuant to this regulation, and any subsequent updates or changes to such operating plan, shall be exempt from disclosure pursuant to Government Code section 6254(k) and non-disclosable to the public.</u></p> | | <p>asked for disclosure of the operating plan. CHRB seeks to protect it from public disclosure and any public records request. CHRB declined to make any changes by stating that "a candid assessment has to be confidential." While this may be a fruitful and conscientious opinion, it is not based in the law. CHRB must articulate a sound legal reason why this information is exempt under the Public Records Act. Again, there is nothing in the Exchange Wagering Law which protects these records from disclosure.</p> | |
| California Thoroughbred | <u>2087. Suspending Markets.</u> | Modify 2087(c) | Subsection (c) allows the exchange provider to settle the market <i>"upon the</i> | |

| California Horse Racing Board | | | | |
|----------------------------------|--|--|--|----------------------|
| From | Current Rule Number and Text | Proposed Modifications Received | Comments Received | Staff Recommendation |
| Trainers | <p><u>(a) An exchange provider may suspend a market at any time, including after the race is declared official but before winning wagers are credited, if the provider has reason to suspect that fraud or any other action or inaction by any person connected with the race raises questions about the integrity and fairness of the market.</u></p> <p><u>(b) The provider shall immediately notify the Board by means of electronic mail any time a market is so suspended. Upon settlement of the market the provider shall submit to the Board a written account of the suspension that at a minimum provides the following information:</u></p> <p><u>(1) The market suspended;</u></p> <p><u>(2) The date and time of the suspension;</u></p> <p><u>(3) The reason for suspending the market;</u></p> <p><u>(4) The results of the investigation;</u></p> <p><u>(5) How the market was settled.</u></p> <p><u>(c) Upon the completion of an investigation, the exchange provider shall settle the market as appropriate.</u></p> <p><u>(d) An account holder who believes a payout was inappropriately disrupted due to the suspension of a market may submit a claim to the exchange provider in accordance with Rule 2089 of this article.</u></p> | <p>Upon the completion of an investigation <u>or at any appropriate time before completion of the investigation</u>, the exchange provider shall settle the market as appropriate.</p> | <p><i>completion of an investigation"</i> related to fraud, etc. Since it is conceivable that a suspicious transaction would involve only a small fraction of the entire wagering pool, it is not clear why the payoffs for the remainder of the market would have to be delayed. It entirely fails to address those instances where fraud is not widespread, namely, where a single person might make a single illegal wager. Language to the effect, <i>"...or at any appropriate time before completion of the investigation..."</i> following the opening clause would seem more in keeping with the practical reality of such situations. In this way, those account holders who had nothing to do with the suspicious wagers would not be unduly prejudiced by the delay in conducting an investigation into the race.</p> | |
| California Thoroughbred Trainers | <p><u>2087.5. Antepost Market.</u></p> <p><u>(a) Antepost market wagers are authorized and are wagers placed in advance of the closing of entries where one single wager is made on an outcome that includes both:</u></p> <p><u>(1) that the selected horse will run the race; and</u></p> <p><u>(2) that the selected horse will finish the</u></p> | <p>Strike 2087.5</p> <p><u>(a) Antepost market wagers are authorized and are wagers placed in advance of the closing of entries where one single wager is made on an outcome that includes both:</u></p> <p><u>(1) that the selected horse</u></p> | <p>Antepost wagers include a betting element related to whether the horse will even start in a race. There is nothing in the Exchange Wagering Law which either defines or allows antepost wagers. There is nothing in the regulations which defines how these wagers will be kept separate from the</p> | |

| California Horse Racing Board | | | | |
|----------------------------------|---|---|---|----------------------|
| From | Current Rule Number and Text | Proposed Modifications Received | Comments Received | Staff Recommendation |
| | <p>race in the selected position of win, place, or show.</p> <p><u>(b) Antepost markets close for wagering at the close of entries.</u></p> | <p>will run the race; and</p> <p>(2) that the selected horse</p> <p>will finish the race in the selected</p> <p>position of win, place, or show.</p> <p>(b) Antepost markets close</p> <p>for wagering at the close of entries.</p> <p>In the alternative, modify 2087.5(a):</p> <p>(a) <u>Subject to Rule 2087.6</u>, antepost market wagers are authorized...</p> | <p>regular exchange wagers. How do antepost wagers deal with, for example, a horse which is declared a non-starter even after crossing the finish line in first, second or third?² Despite all this missing and necessary information, 2087.5 is the only proposed regulation which speaks of the antepost market. CTT asked for a modification based on the vague definition of the timing of antepost wagers. CHRB agreed. It seeks to add language defining antepost markets as closing at the close of entries. That does not, however, address the concern that mischief is possible if someone can cash a bet by scratching a horse. A horse can be scratched even after the close of entries. There is tremendous potential for mischief if scratching a horse can mean winning a bet. Further complicating this framework is that an exchange provider may be allowed to settle bets before the race is declared official.</p> | |
| California Thoroughbred Trainers | <p><u>2087.6. Cancellation of Matched Wagers.</u></p> <p><u>(a) An exchange provider may cancel or void a matched wager if required by law or where, in its sole discretion, it determines:</u></p> | <p>Modify 2087.6(b)</p> <p>(a) An exchange provider may cancel or void a matched wager, <u>including</u></p> | <p>The CTT proposal for subsection (a) attempts to address the concerns raised with the antepost market as set forth above. In the event the CHRB does not</p> | |

² This is not a remote circumstance. On March 3, 2012, for example, the horse, Mr. Bossy Pants appeared to win the 3rd race at Santa Anita. As such, he would have returned a winning wager for his “win” backers in the antepost market since he started and finished in the position they predicted. However, after a lengthy delay, the Stewards ruled the horse a non-starter and the race “no contest” thus nullifying what was a winning wager on Mr. Bossy Pants and turning it into either a cancelled wager or a losing one. On August 10, 2012, in the 4th race at Del Mar, the horse, Toomanytomatoes, was declared a non-starter but crossed the wire in 4th position. Had this horse finished 3rd or better it would have appeared that this could have been a winning antepost wager. However, since he was declared a non-starter this antepost wager turns immediately into a losing one even though the horse started. It would have been a losing wager even if the horse finished 1st, 2nd or 3rd. In pari mutuel wagering, this bet would be refunded.

| California Horse Racing Board | | | | |
|----------------------------------|---|---|--|----------------------|
| From | Current Rule Number and Text | Proposed Modifications Received | Comments Received | Staff Recommendation |
| | <p><u>(1) there is a technological failure and the market must be voided; or</u></p> <p><u>(2) there is good cause to suspect that a person placing a wager through the exchange has breached any term of the person's agreement with the exchange provider;</u></p> <p><u>(3) it is in the interest of maintaining integrity and fairness in a particular market; or</u></p> <p><u>(4) human error by the exchange wagering provider in recording an exchange wager.</u></p> <p><u>(b) If a matched wager is canceled or voided due to situations described in subparagraphs (a)(1), (a)(2) and (a)(3) of this regulation, the exchange provider shall notify the Board in writing of its actions and the circumstances that resulted in such action.</u></p> <p><u>(c) An account holder who believes a payout was inappropriately disrupted due to the cancellation of a matched wager may submit a claim to the exchange provider in accordance with Rule 2089 of this article.</u></p> | <p><u>antepost market wagers</u>, if required by law <u>such as where a race is declared a "no contest" or a horse is declared a non-starter</u>; or where, in its sole discretion, it determines:</p> <p>(1) there is a technological failure and the market must be voided; or</p> <p>(2) there is good cause to suspect that a person placing a wager through the exchange has breached any term of the person's agreement with the exchange provider;</p> <p>(3) it is in the interest of maintaining integrity and fairness in a particular market; or</p> <p>(4) human error by the exchange wagering provider in recording an exchange wager.</p> <p>...(b) If a matched wager is canceled or voided due to situations described in <u>subparagraph (a)</u> of this regulation, the exchange provider shall notify the Board in writing of its actions and the circumstances that resulted in such action.</p> | <p>strike the antepost regulation in its entirety, this proposed language for 2087.6 attempts to specify that "no contests" or "non-starters" will not be adversely affected in the antepost market. This should not be left to the sole discretion of the provider.</p> <p>As for subsection (b), CTT asked for more inclusive language pursuant to the statute. CHRB agreed although it still left out the reporting of "human error cancellations." [2087.6(a)(4)] CHRB takes a very narrow view of "human error" when dealing with exchange wagering as opposed to pari-mutuel wagering. Because of the almost exclusive usage of computers in exchange wagering, it seems unlikely to have a human error in exchange wagering without also having a technical error. And technical errors must be reported.</p> | |
| California Thoroughbred Trainers | <p><u>2089. Errors in Payments of Exchange Wagers.</u></p> <p><u>If an error occurs in the payment of amounts for exchange wagers, the following shall apply:</u></p> <p><u>(a) In the event the error results in an over-payment to the individuals wagering, the exchange provider shall be responsible for such payment.</u></p> <p><u>(b) In the event the error results in an under-</u></p> | <p>Modify 2089(b).</p> <p>In the event the error results in an under payment:</p> <p><u>(1) The exchange provider shall notify the account holder of such underpayment;</u></p> | <p>This proposed regulation does not contemplate those instances in which only the exchange provider becomes aware of an underpayment. It places the burden of knowing about and filing a claim on an underpayment squarely and entirely on the account holder. Because it is entirely possible that the</p> | |

| California Horse Racing Board | | | | |
|----------------------------------|--|---|---|----------------------|
| From | Current Rule Number and Text | Proposed Modifications Received | Comments Received | Staff Recommendation |
| | <p><u>payment:</u></p> <p><u>(1) An account holder must submit a claim for the underpayment within 30 90 calendar days inclusive of the date on which the alleged underpayment occurred. The exchange provider shall investigate such claims and shall pay each claim, or a part thereof, which it determines to be valid, and shall notify the claimant in writing if his claim is rejected as invalid.</u></p> <p><u>(2) Any claim not filed with the exchange provider within 30 90 calendar days inclusive of the date on which the alleged under-payment occurred shall be deemed waived and the exchange provider shall have no further liability therefore.</u></p> <p><u>(3) Any person whose claim is rejected by the exchange provider may, within 15 45 calendar days from the date he received the notice of rejection, request in writing that the Board determine the validity of the claim. Failure to file such request with the Board within the said time shall constitute a waiver of the claim.</u></p> | | <p>provider would be the first and only party to know of an underpayment, language should be included that the exchange provider must notify the account holder anytime there is an underpayment. This would be consistent with the Exchange Wagering Law which mandates integrity of the system and protection of the public.</p> | |
| California Thoroughbred Trainers | <p><u>2090. Posting Credits for Winnings from Exchange Wagers.</u></p> <p><u>(a) Credit for winnings from matched wagers placed with funds in an account shall be posted to the account by the exchange provider after the race is declared official.</u></p> <p><u>(b) Notwithstanding Rule 1955 of this division, where the outcome of a matched antepost wager can be determined with certainty by the exchange provider prior to the time that the race is declared official, the exchange provider may settle such matched antepost wager as soon</u></p> | <p>Strike 2090 subsection (b).</p> <p>“Notwithstanding Rule 1955 of this division, where the outcome of a matched antepost wager <i>involving a scratched horse, only</i>, can be determined with certainty by the exchange provider prior to the time that the race is declared official, the exchange provider may settle such matched antepost wager as soon as the outcome is determined with</p> | <p>See comments to 2087.5 and 2087.6, above.</p> <p>2090(b) allows the exchange provider to settle wagers before the race is official, contrary to <i>Racing Rule 1955</i>. Pari-mutuel wagers are settled after the race is declared official. This regulation seems incompatible with existing regulations. CHRB modified it to pertain only to antepost wagers but it still did not answer the question as to how a race can be “determined with certainty”</p> | |

| California Horse Racing Board | | | | |
|---|---|--|---|----------------------|
| From | Current Rule Number and Text | Proposed Modifications Received | Comments Received | Staff Recommendation |
| | <p><u>as that outcome is determined with certainty.</u></p> | <p>certainty.”</p> | <p>before it is or without it being declared official. This is important for horses declared non-starters. The only way a race can be “determined with certainty” is to have it declared official. That is the cornerstone of pari-mutuel wagering. The CTT proposed modification understands that scratched horses would be “determined with certainty” as it pertains to the antepost market. Even with antepost wagers and unlike a scratched horse, however, a horse may be declared a non-starter long after it has crossed the finish line. But, unlike pari-mutuel wagering where the bet would be refunded, a non-starter would be a losing ticket in the antepost market. Only when the race is declared official can the status and finish position of each horse which was not scratched before the start of the race, be determined with certainty. In sum, 2090 cannot be reconciled with Racing Rule 1955 using this language.</p> | |
| <p>California Thoroughbred Trainers</p> | <p><u>2091.6. Powers of the Board to Review and Audit Records.</u></p> <p><u>The Board shall have access for review and audit, to all records and financial information of an exchange provider. The information shall be made available upon notice from the Board, at all reasonable times to the extent such disclosure is not prohibited by law. Board access to and use of information</u></p> | <p>Strike the language:</p> <p>“...Board access to and use of information concerning exchange wagering transactions and account holders shall be considered proprietary to the exchange provider and shall not be disclosed publicly except as may be required by law.”</p> | <p>The essence of pari-mutuel wagering is complete public disclosure of wagers, pool, revenues and distributions. On the other hand, this section states that “access to and use of information concerning exchange wagering transactions...shall not be disclosed publicly.” As stated above, it does not appear that any privilege attaches to this information and thus would not be</p> | |

| California Horse Racing Board | | | | |
|----------------------------------|--|---|---|----------------------|
| From | Current Rule Number and Text | Proposed Modifications Received | Comments Received | Staff Recommendation |
| | <p><u>concerning exchange wagering transactions and account holders shall be considered proprietary to the exchange provider and shall not be disclosed publicly except as may be required by law.</u></p> | | <p>prohibited under the PRA. For industry stakeholders who are planning budgets and would like to review the exchange provider's estimations for past and future wagering, this information seems critical and relevant. On balance, the public would be served by its disclosure as opposed to any potential harm to the exchange provider. To be sure, the provider should be able to protect its trade secrets with regards to software, etc. But the wagering and budgeting information should be disclosed. There is nothing in the Exchange Wagering Law which extends this protection to these records or which ordains these records as "<i>proprietary to the exchange provider.</i>" To that extent, this regulation is inconsistent with Exchange Wagering Law, pari-mutuel wagering and public disclosure laws. See, also, comments to 2086.6, above.</p> | |
| California Thoroughbred Trainers | <p><u>(Old) 2092 has been deleted from the most recent version of the proposed regulations.</u></p> | <p>Re-insert (Old) 2092 with modified language.</p> <p>"Prior to accepting exchange wagers, an exchange provider shall first enter into an exchange wagering agreement allowing those wagers pursuant to the terms of Business and Professions Code section 19604.5.</p> <p>Each exchange provider shall distribute all moneys in each pool, net of any fees, charges, or deductions of</p> | <p>Whereas other proposed regulations seek to allow the exchange provider to settle markets before the race is declared official, 2092 mandates that total settlement, which includes distribution of the commissions, cannot be completed until the race is declared official. The conflict between the regulations is obvious.</p> <p>Also, by adding the language "via the purse account," the statutory distributions for TOC, CTT and the</p> | |

| California Horse Racing Board | | | | |
|----------------------------------|---|---|--|----------------------|
| From | Current Rule Number and Text | Proposed Modifications Received | Comments Received | Staff Recommendation |
| | | <p>any kind assessed or collected by the exchange provider in connection with matched wagers in that pool, after any races associated with that pool are declared official. Each exchange provider shall distribute the portions of the exchange provider's exchange revenues as may be required pursuant to the exchange wagering agreement pursuant to Business and Professions Code sections 19604.5(b)(2) to (7), inclusive. Fifty percent of the amounts received by a racing association or racing fair from exchange wagering shall be paid to horsemen participating in the meetings conducted by that racing association or racing fair in the form of purses <i>via the purse account</i>. The allocation of amounts received by a racing association or racing fair from exchange wagering between that racing association or racing fair and the horsemen participating in the meetings conducted by that racing association or racing fair may be modified by a written agreement between those entities."</p> | <p>Backstretch Pension are preserved since these are the only statutorily mandated deductions to come from the purse account, whereas other recipients of funding are specifically provided for elsewhere in the law and regulation.</p> | |
| California Thoroughbred Trainers | <p><u>2092.6. Suspension of Occupational License.</u></p> <p><u>(a) The Board of Stewards may suspend the license of any person if, after a hearing, it determines there is probable cause to believe that such person may have has committed acts of fraud in connection with exchange wagering or any other action or inaction which threatens the</u></p> | <p>Modify 2092.6.</p> <p>"(a) The Board of Stewards may, <i>after a hearing conducted pursuant to Government Code sections 11340, et seq.</i>, suspend the license of any person if it <i>rules</i> that a licensee has committed</p> | <p>CHRB changed the probable cause standard and included "after a hearing." However, it still does not address that not all Stewards' hearings are APA hearings or force the stewards to make an affirmative ruling. Sometimes stewards dispose of cases at informal</p> | |

| California Horse Racing Board | | | | |
|----------------------------------|--|--|---|----------------------|
| From | Current Rule Number and Text | Proposed Modifications Received | Comments Received | Staff Recommendation |
| | <p><u>integrity or fairness of any exchange wagering.</u></p> <p><u>(b) Such suspension of license shall be for a period of time designated by the Board of Stewards, unless otherwise determined by the Board.</u></p> <p><u>(c) The licensee may make an appeal to the Board by complying with the provisions of Rule 1761 of this division.</u></p> | <p>acts of fraud in connection with exchange wagering or any other action or inaction which is <u>violative of the provisions of this Section.</u></p> <p>(b) Such suspension of license shall be for a period of time designated by the Board of Stewards, unless otherwise determined by the Board.</p> <p>(c) The licensee may make an appeal to <u>and seek a temporary stay from</u> the Board by complying with the provisions of Rules 1761 <u>and 1762</u> of this division.</p> | <p>hearings. The regulation should specifically safeguard that all hearings in this context are to be APA hearings. Further, the CHRB has, in the past, tried to limit the applicability of the APA by invoking <u>Business and Professions Code 19461</u> which pertains only to license revocations. Also, the language, “action or inaction which threatens the integrity or fairness of any exchange wagering” is hopelessly vague and susceptible to capricious interpretation. The proposed CTT language is straightforward and based in and on the Exchange Wagering Law and the proposed regulations. CHRB does not address the CTT request to include Rule 1762 which would allow the licensee to seek a temporary stay order along with his appeal. As set forth in the racing rules, a licensee is afforded the opportunity to request a stay of any ruling, order or decision of the Stewards. The same should be true for these new regulations.</p> | |
| California Thoroughbred Trainers | 2086.7 “... <u>pari-mutual</u> ...” | <p>Spelling.</p> <p>“...<u>pari-mutuel</u>...” or “<u>parimutuel</u>”</p> | B&P §19604.5(a)(16). | |